

REMARKS

Claims 1-41 are pending in this application. The Office Action withdraws claims 6-8, 12-15, 19-24, 28-32 and 34-37 as drawn to non-elected species; objects to the specification; rejects claims 4 and 26 under 35 U.S.C. §112, second paragraph; rejects claims 1-5, 9-11, 16-17, 25-26 and 38-39 under 35 U.S.C. §102(b); and rejects claims 1-5, 9-11, 16-18, 25-27, 33 and 38-39 under 35 U.S.C. §103(a). By this Amendment, claims 1-39 are amended for formalities, and new claims 40 and 41 are added. Support for new claims 40 and 41 may be found in original claims 4 and 26. No new matter is added.

I. Objection to the Specification

Although no specific objection to the specification was made in the body of the Office Action, the PTO form 326 "Office Action Summary" indicated that the specification was objected to by the Examiner, and page 2 of the Office Action states "please insert the continuity data." Applicant therefore understands the objection to the specification to refer to the continuity data.

By this Amendment, the specification is amended to refer to the continuity data.

Reconsideration and withdrawal of the objection are respectfully requested.

II. Information Disclosure Statement

An Information Disclosure Statement (IDS) was filed on July 11, 2005. The Office Action states that "[f]oreign language references submitted on 7/11/2005 have only been considered to the extent that an English language equivalent has been supplied to the Examiner. References without an English language Abstract of equivalent have been lined through and not considered." The Form PTO-1449 filed July 11, 2005 as marked by the Examiner indicates that references 9-13 were not considered.

Applicant respectfully submits that the Office Action has improperly applied the standard for considering foreign language references, and that these references must be considered. Specifically, under 37 C.F.R. §1.98(a)(3)(i), Applicant need only submit a "concise explanation of the relevance" of any reference not in the English language. In the IDS filed July 11, 2005, references 9-11 were cited in an International Search Report. A copy of the International Search Report was submitted with the IDS. Furthermore, references 12 and 13 are discussed in the present specification. Accordingly, the International Search Report and the present specification each constitute a "concise explanation of the relevance" of the respective references.

The Office Action alleges that these references will not be considered without an English language translation or a portion thereof. However, 37 C.F.R. §1.98(a)(3)(ii) specifically states that "a written English-language translation of a non-English-language document, or portion thereof" need only be submitted "if" such a document "is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c)." Applicant respectfully submits that this is not the case, and so there is no requirement for such a translation to be submitted.

Accordingly, references 9-13 as listed on the Form PTO-1449 accompanying the IDS filed July 11, 2005, must be considered.

III. Rejections under 35 U.S.C. §112, second paragraph

Claims 4 and 12 are rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. Specifically, claims 4 and 12 are allegedly indefinite for reciting "preferably" and "such as."

Without admitting the propriety of the rejection, and in the interest of advancing prosecution, claims 4 and 26 are amended. New claims 40 and 41 are added to recite the narrow ranges that are removed from the recitations of claim 4 and 26.

Reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejection under 35 U.S.C. §102(b)

Claims 1-5, 9-11, 16-17, 25-26 and 38-39 are rejected under 35 U.S.C. §102(b) as anticipated by Tsukii (EP 0639331). Applicant respectfully traverses the rejection.

Applicant respectfully submits that Tsukii does not disclose all the features of independent claim 1. Specifically, first, Tsukii at least fails to disclose that the reducing agent is included in an amount that is at most 16% by weight. Instead, Tsukii discloses that the reducing agent is included in amounts of 21% or more by weight.

Applicant respectfully submits that Tsukii discloses many compounds, in a potentially confusing manner. In order to better understand the disclosures of Tsukii, the compounds disclosed therein are categorized as follows. Where applicable, beside each component is a reference to the page and line number of the present specification, to show why the compounds are categorized as such. Applicant respectfully submits that the categorization of each component is clearly known to a person having ordinary skill in the art.

<u>Active Ingredient</u>	<u>Reducing Agents</u>	<u>Oxidizing Agents</u>	<u>Mineral Fillers</u>
Cyphenothrin	Azodicarbonamide (13, 37)	Potassium perchlorate (14, 15)	Perlite (12, 16)
	Diphenylamine	Potassium chlorate (14, 15)	Zinc oxide (12, 17)
	Lactose (13, 19)	Celluloid (14, 14)	Potassium chloride (12, 30)
	Guanidine nitrate (13, 37)		Triion tetroxide (12, 17)
	Methyl cellulose (13, 11)		Aluminum oxide (12, 18)
			Kaolin clay (12, 1)

From the above categorization, the weight percents of various groups of components can be better understood.

First, with regards to the presently claimed feature "the reducing agent at most 16% by weight of said base," Applicant respectfully submits that the Office Action has not in any way shown how Tsukii discloses this feature. The Office Action at pages 5-6 appears to merely repeat the variously listed components disclosed by Tsukii, but does not show how these components add up to the reducing agent being at most 16% by weight. Instead, Applicant respectfully submits that Tsukii makes no such disclosure.

The attached spreadsheet shows a detailed analysis and various calculations regarding the disclosures of Tsukii. Although these calculations involve a variety of components in the composition disclosed by Tsukii, Applicant respectfully submit that these calculations are not mathematically complex and so are within the skill of a person having ordinary skill in the art. As can be seen in the attached spreadsheet, the results of these calculations are:

<u>Total</u>	<u>% - Example 1</u>	<u>% - Example 2</u>	<u>% - Example 3</u>
Active ingredient	6	5.9	7.92
Reducing Agent	21.76	23.3	23.3
Oxidizing Agent	14.6	15.4	15.4
Mineral Filters	57.64	55.4	53.4
Oxidizing/Reducing	0.67	0.66	0.66

Accordingly, Tsukii does *not* disclose a composition having at most 16% by weight reducing agent. Instead, Tsukii discloses a composition having 21% or more by weight reducing agent.

Similarly, Tsukii also does not disclose a composition wherein the ratio by weight of oxidizing agent to reducing agent is at least 3/1. Instead, as the above table and attached calculations show, Tsukii merely discloses a ratio of about 0.66. This ratio taught by Tsukii is clearly far smaller than the presently claimed ratio.

With respect to the Office Action's argument at page 5 allegedly showing how Tsukii discloses a 3/1 ratio, Applicant respectfully submits that these calculations do not take into

account *every* component of the compositions disclosed by Tsukii. Specifically, guanidine nitrate and related compounds disclosed by Tsukii at page 2, lines 28-29 are *also* reducing agents. This is known to a person having ordinary skill in the art, and is discussed with respect to guanidine nitrate at page 13, line 37 of the present specification.

Accordingly, independent claim 1 is not anticipated for at least the reasons discussed above. Dependent claims 2-5, 9-11, 16-17, 25-26 and 38-39 therefore are also not anticipated for at least the reason that independent claim 1 is not anticipated.

Reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejection under 35 U.S.C. §103(a)

Claims 1-5, 9-11, 16-18, 25-27, 33 and 38-39 are rejected under 35 U.S.C. §103(a) as having been obvious over Tsukii in view of Radulescu (U.S. Patent No. 3,956,849).

Applicant respectfully traverses the rejection.

Applicant respectfully submits that the presently claimed features "the reducing agent at most 16% by weight" and "the ratio by weight of said oxidizing agent to said reducing agent being at least 3/1" would not have been obvious over Tsukii, as discussed above. Specifically, Tsukii nowhere teaches or suggests further changing the various amounts of different types of components disclosed therein in order to achieve these particular values. For example, Tsukii is directed to a very different technical problem than that of the presently claimed invention. Tsukii is directed to achieving "high vaporizing rate" (page 2, lines 13-15), whereas the presently claimed invention reduces residues generated by the smoke. Abstract. Accordingly, a person having ordinary skill in the art would have had no reason or rationale to modify the teachings of Tsukii in order to practice the presently claimed invention.

Applicant respectfully submits that Radulescu fails to cure this deficiency of Tsukii. Radulescu is cited merely for its teachings regarding kaolin and silica, and the amount of oxidizing agent. See the Office Action at page 7. Radulescu nowhere makes any teaching or

suggestion regarding the reducing agent being at most 16% by weight, or that the ratio by weight of the oxidizing agent to the reducing agent is 3/1.

Accordingly, independent claim 1 would not have been obvious over Tsukii in view of Radulescu for at least the reasons discussed above. Dependent claims 2-5, 9-11, 16-18, 25-27, 33 and 38-39 therefore also would not have been obvious for at least the reason that independent claim 1 would not have been obvious.

IIIV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Samuel T. Dangremond
Registration No. 60,466

WPB:STD/std

Enclosures:

Calculation sheets
Petition for Extension of Time
Amendment Transmittal Form

Date: November 10, 2008

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461
--

	A	B	C	D	E	F	G
1	Calculations regarding the disclosure of Tsukii (EP 0639331)						
2							
3							
4	Granules A						
5	cyphenothrin (A.I.)	15	6	15	5.94	20	7.92
6	celluloid (O.A.)	17	6.8	19	7.524	19	7.524
7	azodicarbonamide (R.A.)	28	11.2	32	12.672	32	12.672
8	diphenylamine (R.A.)	0.4	0.16	0.4	0.1584	0.4	0.1584
9	perlite (M.F.)	29.1	11.64	23.1	9.1476	18.1	7.1676
10	zinc oxide (M.F.)	10	4	10	3.96	10	3.96
11	methyl cellulose (R.A.)	0.5	0.2	0.5	0.198	0.5	0.198
12	Total	100		100		100	
13							
14	Granules B						
15	potassium perchlorate (O.A.)	10	6	10	6.0	10	6.0
16	potassium chlorate (O.A.)	3	1.8	3	1.8	3	1.8
17	lactose (R.A.)	10	6	10	6.0	10	6.0
18	guanidine nitrate (R.A.)	6	3.6	6	3.6	6	3.6
19	potassium chloride (M.F.)	10	6	10	6.0	10	6.0
20	triiron tetroxide (M.F.)	15	9	15	9.1	15	9.1
21	aluminium oxide (M.F.)	20	12	20	12.1	20	12.1
22	kaolin clay (M.F.)	25	15	25	15.1	25	15.1
23	methyl cellulose (R.A.)	1	0.6	1	0.6	1	0.6
24	Total	100		100		100	
25							
26	Total		% - Example 1		% - Example 2		% - Example 3
27	A.I.		6		5.9		7.92
28	R.A.		21.76		23.3		23.3
29	O.A.		14.6		15.4		15.4
30	M.F.		57.64		55.4		53.4
31	O.A./R.A.		0.67		0.66		0.66
32			100		100.0		100

A			B	C
1	Calculations regarding the disclosure of Tsukii (EP 0639331)			
2				
3				
4	Granules A			
5	cyphenothrin (A.I.)	15		=B5*0.4
6	celluloid (O.A.)	17		=B6*0.4
7	azodicarbonamide (R.A.)	28		=B7*0.4
8	diphenylalamine (R.A.)	0.4		=B8*0.4
9	perlite (M.F.)	29.1		=B9*0.4
10	zinc oxide (M.F.)	10		=B10*0.4
11	methyl cellulose (R.A.)	0.5		=B11*0.4
12	Total	=SUM(B5:B11)		
13				
14	Granules B			
15	potassium perchlorate (O.A.)	10		=B15*0.6
16	potassium chlorate (O.A.)	3		=B16*0.6
17	lactose (R.A.)	10		=B17*0.6
18	guanidine nitrate (R.A.)	6		=B18*0.6
19	potassium chloride (M.F.)	10		=B19*0.6
20	triiron tetroxide (M.F.)	15		=B20*0.6
21	aluminium oxide (M.F.)	20		=B21*0.6
22	kaolin clay (M.F.)	25		=B22*0.6
23	methyl cellulose (R.A.)	1		=B23*0.6
24	Total	=SUM(B15:B23)		
25				
26	Total			% - Example 1
27	A.I.			=C15
28	R.A.			=C7+C8+C11+C17+C18+C23
29	O.A.			=C6+C15+C16
30	M.F.			=C19+C20+C21+C22+C10+C9
31	O.A./R.A.			=C29/C28
32				=SUM(C27:C30)

	D	E	F	G
1				
2				
3	example 2 (parts)	example 2 with ratio A	example 3 (parts)	example 3 with ratio A
4				
5	15	=D5*0.396	20	=F5*0.396
6	19	=D6*0.396	19	=F6*0.396
7	32	=D7*0.396	32	=F7*0.396
8	0.4	=D8*0.396	0.4	=F8*0.396
9	23.1	=D9*0.396	18.1	=F9*0.396
10	10	=D10*0.396	10	=F10*0.396
11	0.5	=D11*0.396	0.5	=F11*0.396
12	=SUM(D5:D11)		=SUM(F5:F11)	
13				
14	example 2 (parts)	example 2 with ratio B	example 3 (parts)	example 3 with ratio B
15	10	=D15*0.604	10	=F15*0.604
16	3	=D16*0.604	3	=F16*0.604
17	10	=D17*0.604	10	=F17*0.604
18	6	=D18*0.604	6	=F18*0.604
19	10	=D19*0.604	10	=F19*0.604
20	15	=D20*0.604	15	=F20*0.604
21	20	=D21*0.604	20	=F21*0.604
22	25	=D22*0.604	25	=F22*0.604
23	1	=D23*0.604	1	=F23*0.604
24	=SUM(D15:D23)		=SUM(F15:F23)	
25				
26		% - Example 2		% - Example 3
27		=E5		=G5
28		=E7+E8+E11+E17+E18+E23		=G7+G8+G11+G18+G17+G23
29		=E6+E15+E16		=G6+G15+G16
30		=E9+E10+E19+E20+E21+E22		=G9+G10+G19+G20+G21+G22
31		=E29/E28		=G29/G28
32		=SUM(E27:E30)		=SUM(G27:G30)